

Message Text

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APPROVED BY OES/APT/DA;DAVOGT

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L/M:CMALMBORG

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L/T:AROVINE

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FM SECSTATE WASHDC

TO AMEMBASSY QUITO PRIORITY

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E.O. 11652:N/A

TAGS: TSPA:EC

SUBJECT:NASA STATION NEGOTIATIONS

REF:QUITO 4944

1. WE HAVE REVIEWED CHANGES PROPOSED IN PARAS 3 AND 4 OF REFTEL. IN REPLY TO THESE PROPOSALS, WE REQUEST THAT YOU PROPOSE THE FOLLOWING NEW VERSION OF ARTICLE VIII TO THE ECUADOREANS:

QUOTE PARAGRAPH. WHENEVER ANY TECHNICAL EQUIPMENT OR MATERIAL OF THE STATION IS DECLARED BY THE UNITED STATES COOPERATING AGENCY TO BE EXCESS TO ITS OPERATIONAL NEEDS, THE MATERIAL OR EQUIPMENT WILL BE OFFERED IN ACCORDANCE WITH THE LAWS AND ADMINISTRATIVE PROCEDURES OF THE UNITED STATES, IN THE FIRST INSTANCE TO THE ECUADOREAN COOPERATING AGENCY. SHOULD THE LATTER NOT DESIRE THE PROPERTY, IT WILL BE DIS-LIMITED OFFICIAL USE
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POSED OF BY THE EMBASSY OF THE UNITED STATES IN QUITO.

PARAGRAPH QUOTE. IF, FOR WHATEVER REASON, THE AGREEMENT IS TERMINATED, THE UNITED STATES COOPERATING AGENCY, AFTER

CONSULTATION WITH THE ECUADOREAN COOPERATING AGENCY WILL
SELECT THE EQUIPMENT AND MATERIAL WHICH IT CAN CONTINUE TO

USE IN ITS WORLDWIDE OPERATIONS AND WILL EXPORT SUCH PROP-
ERTY IN ACCORDANCE WITH ARTICLE VI(2). THE REMAINDER OF
SUCH PROPERTY WILL BE DISPOSED OF IN ACCORDANCE WITH THE
PROCEDURE SET FORTH IN THE PREVIOUS PARAGRAPH. UNQUOTE.

SPANISH TEXT: QUOTE ARTICULO VIII UNQUOTE.

PARAGRAPH QUOTE. CUANDO CUALESQUIERA EQUIPOS OF MATERIALES
TECNICOS DE LA ESTACION FUEREN DECLARADOS EXCEDENTES A LAS
NECESIDADES OPERACIONALES POR EL ORGANISMO COOPERATIVO DE
LOS ESTADOS UNIDOS, DICHS MATERIALES O EQUIPOS SERAN
OFRECIDOS, DE CONFORMIDAD CON LAS LEYES Y LOS PROCEDI-
MIENTOS ADMINISTRATIVOS DE LOS ESTADOS UNIDOS, EN PRIMERA
INSTANCIA AL ORGANISMO COOPERATIVO ECUATORIANO. SI ESTE
ULTIMO NO DESEARE TALES BIENES, ESTOS SERAN ENAJENADOS
POR LA EMBAJADA DE LOS ESTADOS UNIDOS EN QUITO.

PARAGRAPH QUOTE. SI, POR CUALQUIER MOTIVO SE DIERE POR
TERMINADO EL ACUERDO, EL ORGANISMO COOPERATIVO DE LOS EST-
ADOS UNIDOS PREVIA CONSULTA CON EL ORGANISMO COOPERATIVO
ECUATORIANO, SELECCIONARA LOS EQUIPOS Y MATERIALES QUE
PUEDE CONTINUAR UTILIZANDO EN SUS OPERACIONES MUNDIALES Y
EXPORTARA TALES BIENES DE CONFORMIDAD CON EL PARRAFO (2)
DEL ARTICULO VI. EL RESTO DE TALES BIENES SE ENAJENARA
DE CONFORMIDAD CON EL PROCEDIMIENTO SENALADO EN EL PARRAFO

ANTERIOR. UNQUOTE.

2. CONCUR WITH SPANISH TRANSLATION LAST PARA ARTICLE IV.

3. WITH CHANGES INDICATED ABOVE, EMBASSY AUTHORIZED TO
EXCHANGE NOTES.

4. FYI: IN REVIEW OF ECUADOREAN PROPOSALS FOR CHANGES
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IN ARTICLE VIII, WE CAME TO CONCLUSION THAT TEXT AS PRE-
VIOUSLY DRAFTED WAS NOT REPEAT NOT CONSISTENT WITH RE-
QUIREMENTS OF US LAW RELATING TO DISPOSAL OF EXCESS PROPER-
TY (SPECIFICALLY, SECTION 512 OF TITLE 40 OF THE UNITED
STATES CODE). WE HAVE THEREFORE PROPOSED A NEW VERSION
THAT IS CONSISTENT WITH US LAW. WE THINK REFERENCE TO US
LAW IS IMPORTANT BECAUSE LAW CONTROLS PROCEDURES. WE BE-
LIEVE THAT THE PARAGRAPH SHOULD BE RESTRUCTURED SO THAT
THE REFERENCE TO LAW AND PROCEDURES COMES AFTER VERB, AND A
MORE APPROPRIATE VERB IS QUOTE OFFERED UNQUOTE. PHRASE
QUOTE AS A DONATION UNQUOTE WOULD NOT BE CONSISTENT WITH US
LAW. WITH REGARD TO SECOND PARA, WE CAN ONLY ACCEPT RE-

QUIREMENT OF ADVANCE CONSULTATIONS WITH THE ECUADOREANS

AND NOT ADVANCE AGREEMENT BECAUSE ECUADOREAN VETO POWER MIGHT PREVENT NASA FROM REMOVING EQUIPMENT REQUIRED FOR USE ELSEWHERE IN NETWORK IN ORDER TO USE IT IN THE MOST EFFECTIVE MANNER. SECOND SENTENCE OF SECOND PARAGRAPH REFERS TO PROCEDURE ESTABLISHED IN FIRST PARAGRAPH AND THUS ENSURES CONSISTENCY OF PROCEDURE IN DISPOSAL OF EXCESS PROPERTY. END FYI.

5. SECTION 512 OF TITLE 40 OF US CODE PROVIDES:

QUOTE (A) AUTHORITY OF EXECUTIVE AGENCY. PARAGRAPH. FOREIGN EXCESS PROPERTY NOT DISPOSED OF UNDER SUBSECTIONS (B) AND (C) OF THIS SECTION MAY BE DISPOSED OF (1) BY SALE, EXCHANGE, LEASE, OR TRANSFER, FOR CASH, CREDIT OR OTHER PROPERTY, WITH OR WITHOUT WARRANTY, AND UPON SUCH OTHER TERMS AND CONDITIONS AS THE HEAD OF THE EXECUTIVE AGENCY CONCERNED DEEMS PROPER; BUT IN NO EVENT SHALL ANY PROPERTY BE SOLD WITHOUT A CONDITION FORBIDDING ITS IMPORTATION INTO THE UNITED STATES, UNLESS THE SECRETARY OF AGRICULTURE (IN THE CASE OF ANY AGRICULTURAL COMMODITY, FOOD, OR COTTON OR WOOLEN GOODS) OR THE SECRETARY OF COMMERCE (IN THE CASE OF ANY OTHER PROPERTY) DETERMINES THAT

THE IMPORTATION OF SUCH PROPERTY WOULD RELIEVE DOMESTIC SHORTAGES OR OTHER WISE BE BENEFICIAL TO THE ECONOMY OF THIS COUNTRY, OR (2) FOR FOREIGN CURRENCIES OR CREDITS, OR SUBSTANTIAL BENEFITS OR THE DISCHARGE OF CLAIMS RESULTING FROM THE COMPROMISE OR SETTLEMENT OF SUCH CLAIMS BY ANY LIMITED OFFICIAL USE
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EXECUTIVE AGENCY IN ACCORDANCE WITH THE LAW, WHENEVER THE HEAD OF THE EXECUTIVE AGENCY CONCERNED DETERMINES THAT IT IS IN THE INTEREST OF THE UNITED STATES TO DO SO. SUCH PROPERTY MAY BE DISPOSED OF WITHOUT ADVERTISING WHEN THE HEAD OF THE EXECUTIVE AGENCY CONCERNED FINDS SO DOING TO BE MOST PRACTICABLE AND TO BE ADVANTAGEOUS TO THE GOVERNMENT. THE HEAD OF EACH EXECUTIVE AGENCY RESPONSIBLE FOR THE DISPOSAL OF FOREIGN EXCESS PROPERTY MAY EXECUTE SUCH DOCUMENTS FOR THE TRANSFER OF TITLE OR OTHER INTEREST IN PROPERTY AND TAKE SUCH OTHER ACTION AS HE DEEMS NECESSARY OR PROPER TO DISPOSE OF SUCH PROPERTY; AND MAY AUTHORIZE THE ABANDONMENT, DESTRUCTION, OR DONATION OF FOREIGN EXCESS PROPERTY UNDER HIS CONTROL WHICH HAS NO COMMERCIAL VALUE OR THE ESTIMATED COST OF CARE AND HANDLING OF WHICH WOULD EXCEED THE ESTIMATED PROCEEDS FROM ITS SALE.

PARA (B) DONATION OF MEDICAL SUPPLIES. PARA. ANY EXECUTIVE AGENCY HAVING IN ANY FOREIGN COUNTRY ANY MEDICAL MATERIALS OR SUPPLIES NOT DISPOSED OF UNDER SUBSECTION (C) OF THIS SECTION, WHICH, IF SITUATED WITHIN THE UNITED

STATES, WOULD BE AVAILABLE FOR DONATION PURSUANT TO

SECTION 484 OF THIS TITLE, MAY DONATE SUCH MATERIALS OR SUPPLIES WITHOUT COST (EXCEPT FOR COSTS OF CARE AND HANDLING), FOR USE IN ANY FOREIGN COUNTRY, TO NONPROFIT MEDICAL OR HEALTH ORGANIZATIONS, INCLUDING THOSE QUALIFIED TO RECEIVE ASSISTANCE UNDER SECTIONS 2174(B) AND 2357 OF TITLE 22.

PARAGRAPH (C) QUOTE. RETURN TO THE UNITED STATES; COSTS. PARAGRAPH UNDER SUCH REGULATIONS AS THE ADMINISTRATOR SHALL PRESCRIBE PURSUANT TO THIS SUBSECTION, ANY FOREIGN EXCESS PROPERTY MAY BE RETURNED TO THE UNITED STATES FOR HANDLING AS EXCESS OF SURPLUS PROPERTY UNDER THE PROVISIONS OF SECTIONS 483, 484 (J), AND 484(L) OF THIS TITLE WHENEVER THE HEAD OF THE EXECUTIVE AGENCY CONCERNED DETERMINES THAT IT IS IN THE INTEREST OF THE UNITED STATES TO DO SO: PROVIDED, THAT REGULATIONS PRESCRIBED PURSUANT TO THIS SUBSECTION SHALL REQUIRE THAT THE TRANSPORTATION COSTS INCIDENT TO SUCH RETURN SHALL BE BORNE BY THE FEDERAL AGENCY, STATE AGENCY, OR DONEE RECEIVING THE PROPERTY. LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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(JUNE 30, 1949, CH. 288, TITLE IV, SUBSEC 402, 63 STAT. 398; SEPT. 26, 1970, PUBL.L.91-426, SUBSEC 2, 84 STAT. 883.) UNQUOTE. INGERSOLL

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